

ISPAC

*International Scientific and Professional
Advisory Council
Of the United Nations
Crime Prevention and Criminal
Justice Programme*



TENTH UNITED NATIONS CONGRESS
ON THE
PREVENTION OF CRIME
AND THE
TREATMENT OF OFFENDERS
Vienna, 10-17 April 2000

STATEMENT

by Guido ROSSI

Acting Chair, International Scientific and Professional Advisory Council
of the United Nations Crime Prevention and Criminal Justice Programme/ISPAC
Professor of Commercial Law, <<L. Bocconi>> University, Milan (Italy)
President, Centro nazionale di prevenzione e difesa sociale/CNPDS- Milan

Towards a globalisation of justice

Liberty, safety and justice are the cornerstones of modern democracies and social organization. Safety and justice are inter-linked - the one being inconceivable without the other - so as to be truly synonymous. Without safety and justice there can be no liberty, so that the problem of justice is actually the basic problem of every democracy.

Until the final decade of the millennium just completed, the three cornerstones had a privileged guarantor in what is the highest product of modern Constitutional theory: "the State founded on the rule of law". From this point, however, "law" has been equated with "laws", with the result of justice being relegated to an essentially "formal" matter. The laws produced by a single national juridical system have not always followed that complex of values which civic society considers imperative, values which are contained in laws, which should be known by all, clear in their meaning and applied to everyone without fear or favour. These are the values intended when one speaks of *the rule of law*, i.e. the pre-eminence of the law.

Thus the phenomenon, which we term globalisation, has delivered a serious blow towards dismantling law as a product of the State, as the *instrumentum regni*. Trade within the "global village" can no longer be controlled by single State systems and individual States are seen as impotent in this respect.

At the beginning of the last century, Walter Rathenau prophesied: "The economy is our destiny" and it is precisely from the economy that Stateless law has emerged. From market-competition, mergers, the invasion of Financial markets by high technology telecommunication businesses, to the rules of *corporate* governance bringing new standards for the management of major companies, a *lex mercatoria* is being created, which will transcend every frontier and be recognised as a new emerging global system. The *lex mercatoria* shatters the taboo of the necessary connexion between State and law from at least two standpoints.

But the globalisation of the economy has brought in its wake not only the globalisation of lifestyle systems, but also, and especially activities that are illicit. In fact, transnational criminal operations are nourished by the same technologies that have enabled the globalisation of legitimate activities to flourish. Operations such as corruption, drugs trafficking, money laundering, the underworld and terrorism benefit from the most sophisticated telecommunications. But, whilst disobedience to laws of the State attracts the sanctions contained in those same laws, which the sovereign authority of the State will see applied, disobedience to the *lex mercatoria* attracts no real sanction, except perhaps ostracism and possible forms of private justice such as international arbitration. The growth of juridical systems outside the State, in the plethora of autonomies, but not of sovereign powers, brings this common law of globalisation very close to the medieval juridical experience.

Yet the autonomy and plurality of systems may serve also to conceal possible diversities of principles, identities, values and trends: in short that minimum common denominator which represents the idea of justice. The more justice systems there are, the more concepts of justice are cultivated, the more contrasts and conflicts may be created. Different concepts of justice lead to a total disagreement on what is just and what is unjust and thus on fundamental rights and duties. Prerequisite for a decent human community and a well-regulated society is a fair degree of accord on the concepts of justice. Such a mutual accord seems to me to be more necessary than ever before, because with ever more violence at large, juridical systems alternative to statal systems, through globalisation, are being created, and in these, despite an inevitable diversity of norms, there should be consensus on the principles of justice, represented primarily by an equal consideration and respect for citizens, and then, as a consequence, a respect for human rights.

Social and political discord, armed conflicts and terrorism, on a vast scale, represent the only terrible alternative to this new social contract. This is not the point to argue for one theory of justice in preference to another. What the *rule of law*, based on the protection of human rights and freedoms, requires is the formulation of general principles to serve as the basis for the rules of governing society, which will then be laid down and applied by local legislators. There will then be all the more need for judicial collaboration and the strengthening of systems of penal justice, in order that they may become more effective in the repression of crime and more just in safeguarding human rights. In my view, this means endeavouring to pass from the globalisation of the economy to the "globalisation of justice".

The "globalisation of justice", in these terms, has two essential applications. The first is a practical one: the harmonisation of different criminal and civil legislations in accordance with principles agreed to be fundamental. The second is more cultural and less technical and consists in formulating those principles on an international plane and elaborating them along lines meeting those concepts of democracy, freedom and security for citizens, which seem to be reaching common acceptance in every civilised country.

To conclude, despite different nuances and applications, those principles are, and must always, be categorical imperatives in the sense described by Emmanuel Kant, principles, in other words, which every independent and rational person, being in a position of equality, would choose.

The law of universal justice, postulated by Kant, is thus a secure reference point - nay more, a vademecum - for a modern globalisation of justice, whose prime dimension should be a cultural one, enshrined in the unanimous consent of all responsible human beings.